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5 **UNITED STATES BANKRUPTCY COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**7
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9 **UNITED STATES BANKRUPTCY COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **SACRAMENTO DIVISION**12
13 In re) Case No. 10-42986-E-13
14 CYNTHIA A. SEAMAN and) Docket Control No. HDR-3
15 STEVEN K. MARSCHKE,)
16 Debtor(s).)
17 _____
1819 This memorandum decision is not approved for publication and may
20 not be cited except when relevant under the doctrine of law of the
21 case or the rules of claim preclusion or issue preclusion.22 **MEMORANDUM OPINION AND DECISION**23 This Objection filed by the Debtors to Proof of Claim No. 10
24 filed for JPMorgan Chase Bank, N.A. has been set for hearing on the
25 notice required by Local Bankruptcy Rule 3007-1(c)(1) and General
26 Order 05-03, Paragraph 6(c/d). Creditor JPMorgan Chase Bank, N.A.
27 filed an opposition.28 The Proof of Claim at issue, listed as claim number 10 on the
29 court's official claims registry, asserts a \$242,157.44 claim. The
30 Debtors object to the Claim on the basis that the claim asserts an
31 indebtedness which is greater than the sum actually due. Debtors
32 assert that the claim implies the obligation to make an ongoing
33 payment in an amount greater than the amount due. Debtors state
34 that the claimant erred in that it transferred money between its
35 own accounts and the escrow account for property taxes and

1 insurance.

2 Creditor JPMorgan Chase Bank, N.A. filed a response on June 7,
3 2011 (Dckt. 75). Creditor states that Debtors believe the ongoing
4 monthly payment is \$1,304.12, which is the amount listed on the
5 Note. The Debtors further provide that they never paid escrow
6 through their account and that if the property tax was recovered
7 through their escrow account, the payment would not be more than
8 \$272.30 per month. Debtors are asking the court to reduce the
9 arrears included on creditor's proof of claim to \$17,865.25, but
10 provide no explanation or breakdown of how that amount was
11 obtained.

12 **DISCUSSION**

13 Section 502(a) provides that a claim supported by a Proof of
14 Claim is allowed unless a party in interest objects. Once an
15 objection has been filed, the court may determine the amount of the
16 claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled
17 law in the Ninth Circuit that the party objecting to a proof of
18 claim has the burden of presenting substantial factual basis to
19 overcome the *prima facie* validity of a proof of claim and the
20 evidence must be of probative force equal to that of the creditor's
21 proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623
22 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In*
23 *re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

24 In focusing on the actual Objection, the court discerns the
25 following points:

26 1. The proof of claim states an arrearage which conflicts
27 with and is greater than the arrearage as set forth in statement
28 from this creditor. The pre-petition arrearage is stated to be

1 \$32,404.68, which consists of 14 payments at \$2,314.62 for the
2 months of July 2009 through August 2010.

3 2. The proof of claim assets that the correct post-petition
4 mortgage payment is \$2,314.62, which the Debtors dispute. The
5 Debtors allege that the monthly payment is \$1,304.12. Declaration
6 of Cynthia Seaman, Dckt. 62.

7 3. In the Debtors' prior Chapter 13 case \$7,073.36 was
8 disbursed on this claim. Declaration of Stephanie Nichols,
9 Dckt. 63.

10 The Opposition of JPMorgan Chase Bank, N.A. is correct in so
11 far as it states that the Objection to the Claim merely makes a
12 general statement of what the Debtors want, not how they legally
13 and factually get there. Some of the information is buried in
14 declaration, some in exhibits. Though the court expected Exhibit F
15 to be a spread sheet outlining the total claim and computation
16 method, this is in part a narrative and the "spread sheet" portion
17 is a list of monthly payments.

18 However, in its Opposition JPMorgan Chase Bank, N.A. does not
19 clearly state how it computes past and current monthly payments of
20 \$2,314.62. At best it says that JPMorgan Chase Bank, N.A. believes
21 that the payment should be \$2,314.62.

22 JPMorgan Chase Bank, N.A. also makes the statement that
23 "Although JPMorgan is not required to provide further documentation
24 to support its proof of claim, JPMorgan, nonetheless, is in the
25 process of obtaining documentation in support of the delinquent
26 payments included on the proof of claim." Dckt. 75. In making
27 this statement, JPMorgan Chase Bank, N.A. appears to have a
28 misunderstanding of its obligations in asserting a claim and the

1 prima facie value of a proof of claim. A creditor has the ultimate
2 burden of persuasion to demonstrate by a preponderance of the
3 evidence its claim. The effect of the proof of claim is to shift
4 the burden of production, not ultimate burden of persuasion. The
5 objecting party provides evidence tending to defeat the claim by
6 probative force equal to that alleged in the proof of claim.
7 *Hardin v. Gianni (In re King St. Invs.)*, 291 B.R. 848, 859 (9th
8 Cir. BAP 1998).

9 The proof of claim filed in this case for JPMorgan Chase Bank,
10 N.A. is signed by William G. Malcolm. Mr. Malcolm is an attorney
11 with the law firm Malcolm ♦ Cisneros, a law firm located in Irvine,
12 California. This law firm represents a number of creditors in
13 various actions before this court. There is nothing in the proof
14 of claim indicating that Mr. Malcolm has any personal knowledge of
15 this claim or the obligation owed to JPMorgan Chase Bank, N.A. In
16 countering this apparent non-personal knowledge proof of claim, the
17 Debtors have provided actual personal knowledge, non-hearsay
18 testimony.

19 Rather than denying the Objection to Claim, the court sets
20 this for a discovery and pretrial setting conference. At that time
21 the court will also set a deadline for the Debtor to file a
22 statement of issues and the methodology for computing the JPMorgan
23 Chase Bank, NA claim, arrearage, and post-petition plan payment in
24 this case.

25 This Decision constitutes the court's findings of fact and
26 conclusions of law pursuant to Fed. R. Bankr. P. 9014 and 7052.

27 Dated: August 14, 2011

By the Court

Ronald H. Sargis
United States Bankruptcy Court

This document does not constitute a certificate of service. The parties listed below will be served a separate copy of the attached document(s).

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